**TO:** Members of Troy City Council
**FROM:** Lori Grigg Bluhm, City Attorney
Allan T. Motzny, Assistant City Attorney
**DATE:** January 14, 2010
**SUBJECT:** Papadelis v. City of Troy (Telly's Nursery)

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Enclosed please find the December 15, 2009 opinion issued by the Michigan Court of Appeals in the *Papadelis v. Troy* lawsuit. This decision affirms the ruling made by Oakland County Circuit Court Judge Colleen A. O'Brien after remand of the case. The opinion is unpublished.

The initial litigation between the City of Troy and the Papadelis family was commenced in May 1991, in an effort to stop the tremendous expansion of Telly's Nursery in a residentially zoned district. The litigation between the parties has continued since that time because Telly's Nursery continued to expand. The litigation has involved several courts, including the 52/4 District Court in Troy, the Oakland County Circuit Court, the United States District Court for the Eastern District of Michigan, the Michigan Court of Appeals, and the Michigan Supreme Court.

The most recent litigation was initiated by the Papadelis family (hereafter "Plaintiffs") when they sued the City in 2005. The Plaintiffs sought money damages, alleging the City's continued enforcement action violated their constitutional rights. They also sought an injunction to prohibit the City from pursuing any further enforcement action against them. Additionally, the Plaintiffs sought a declaratory ruling that the buildings constructed on their property were exempt from City ordinances under the Michigan Right to Farm Act (RTFA) and the Agricultural Exemption of the State Construction Code Act (SCCA). The City filed a counterclaim seeking a court order requiring the Plaintiffs to remove the buildings they constructed without permits in violation of the zoning ordinance. Both the Plaintiffs and the City filed motions for summary disposition. After a hearing, Judge O'Brien granted the City's motion in part and dismissed the Plaintiffs claim for money damages and injunctive relief. However, the Court also granted the Plaintiffs motion in part and issued a declaratory ruling that the buildings were exempt from City ordinances under the RTFA and the SCCA. Based on this ruling, the Court also dismissed the City's counterclaim. The City and the Plaintiffs both appealed that decision to the Michigan Court of Appeals. The Michigan Court of Appeals affirmed Judge O'Brien's decision in its entirety. The City then appealed to the Michigan Supreme Court, and in June 2007, the Michigan Supreme Court issued its favorable opinion for the City, reversing Judge O'Brien's decision and the Michigan Court of Appeals. The Michigan Supreme Court ruled that the structures on the Papadelis property were not exempt from City ordinances and must comply with the applicable ordinances, even if the property is being used as a "farm." This published Michigan Supreme Court decision is viewed as a success for local control, since it affirmed that municipalities can enforce the construction codes and zoning regulations.

Unfortunately, the Supreme Court decision did not end the litigation between the City and the Papadelis family, since the Supreme Court remanded the case to the Oakland County Circuit Court. After this remand, Judge Colleen O'Brien held an evidentiary hearing/bench trial. The only issue in this hearing was whether Plaintiffs should be required to remove buildings that they constructed without permits and in violation of the zoning ordinance. The other issue, the alleged violation of Plaintiff's constitutional rights by the City's enforcement of its ordinances, was completely dismissed. The hearing occurred over several days in the late fall/ early winter of 2007/2008. Judge O'Brien ultimately ruled in favor of the Plaintiffs, finding that since there are no explicit regulations for

structures that are used for "agricultural" purposes in Troy's zoning ordinance, there were no "applicable ordinances" governing Plaintiffs' property. In so ruling, she determined that the residential regulations that apply to all other residential properties in the City were not applicable to Plaintiffs' property. She also ruled that Plaintiffs did not need to pursue site plan approval, even though it is required for almost all other buildings in the City of Troy (there are some explicit exemptions under the ordinance which were not applicable). Judge O'Brien's rationale was that since the Plaintiffs' buildings violated the provisions of Troy's ordinances, then they would not receive site plan approval. It was her opinion that Plaintiffs were excused from seeking site plan approval, since it would have been an exercise in futility.

The City unsuccessfully appealed Judge O'Brien's decision. First, the Court of Appeals did not find an error in Judge O'Brien's reliance on the testimony of Plaintiffs' expert witnesses, even though these experts were admittedly not familiar with either the use of the property in 2003, when Plaintiffs first initiated construction of the buildings in question, or the City's zoning ordinance that was in effect at that time. The Court of Appeals also affirmed Judge O'Brien's determination that the definitions for "accessory building" and "accessory supplemental building" were not applicable to Plaintiffs' buildings because those definitions only apply to residential buildings and not to "agricultural buildings" that are used for commercial purposes. The Court of Appeals then distinguished Troy's zoning ordinance definition of "accessory supplemental building," which expressly includes greenhouses, by holding that this provision was intended to regulate only those greenhouses that are used for hobby, and not commercial greenhouses. The Court of Appeals opinion does not supply the basis or the law for this distinction. However, based on this distinction, the Court of Appeals upheld Judge O'Brien's opinion that there are no applicable Troy regulations for agricultural buildings that are used for commercial purposes.

The opinion also affirms Judge O'Brien's determination that the Plaintiffs did not have to seek site plan approval on the basis of futility. In making this ruling, the Court relied on the notification from the City, which advised the Plaintiffs that permits would not be issued, since the proposed size of the buildings was in violation of City ordinances. In so ruling, the Court failed to acknowledge that site plan approval is within the discretion of the Planning Commission.

The Court did not even address the City's argument that under the zoning ordinance, a person who proposed a structure that is prohibited by the ordinances has an opportunity to seek variances. In this case, even though Plaintiffs were advised that their proposed buildings did not comply with City ordinances, they built them anyway, without seeking a variance or other approval.

The City has the option of appealing the Court of Appeals decision by filing an application for leave to appeal with the Michigan Supreme Court by January 26, 2010. Although we feel the Court of Appeals decision is erroneous, we do not recommend the filing of an application. This unpublished decision is based on the Court's interpretation of Troy's ordinance, and therefore will not have statewide impact. If the City does not appeal, the Plaintiffs will be allowed to continue to use all current buildings on their property. However, zoning ordinance changes could be enacted to address any further commercial expansion of Telly's Nursery upon their residentially zoned property.

If you have any questions concerning the above, please let us know.

# STATE OF MICHIGAN

# COURT OF APPEALS

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GUST PAPADELIS, NIKI PAPADELIS, TELLY'S GREENHOUSE & GARDEN CENTER, INC., and TELLY'S NURSERY, LLC,

Plaintiffs/Counter Defendants-Appellees,

v

CITY OF TROY, MARK STIMAC, and MARLENE STRUCKMAN,

Defendants/Counter Plaintiffs-Appellants,

and

MICHIGAN FARM BUREAU,

Amicus Curiae.

UNPUBLISHED
December 15, 2009

No. 286136
Oakland Circuit Court
LC No. 2005-067029-CZ

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Before: Beckering, P.J., and Cavanagh and M. J. Kelly, JJ.

PER CURIAM.

Defendants appeal by right the denial of their motion for an order directing plaintiffs to remove buildings and other structures constructed without permits or approvals and the dismissal of their counterclaim in this land use dispute that dates back to the early 1990s. We affirm.

The significant history of this matter has been set forth in previous opinions of the Court and will not be repeated at length here. See *City of Troy v Papadelis (On Remand)*, 226 Mich App 90, 95-96; 572 NW2d 246 (1997) (*Papadelis II*); *City of Troy v Papadelis*, unpublished opinion per curiam of the Court of Appeals, issued May 10, 1996 (Docket No. 172026) (*Papadelis I*), vacated 454 Mich 912 (1997). In brief, plaintiffs own two adjacent parcels of land in Troy, Michigan, which have been referred to as the north and south parcels. The Papadelises reside on the north parcel and have operated a nursery and garden center on the south parcel for over 25 years. Both parcels are zoned "R-1D," or "single-family residential," under the city's zoning ordinance. As such, there has been much litigation over plaintiffs' use of the parcels. Ultimately this Court held that the operation of the nursery business on the south parcel could continue as a valid nonconforming use. *Papadelis II*, *supra* at 95-96. Use of the north parcel for

business purposes,[1] however, was not a valid nonconforming use because no commercial activity occurred on the north parcel before the enactment of the zoning ordinance. *Id*. at 96. Thus, this Court remanded the case "for entry of an order enjoining the commercial use of the northern parcel." *Id*. at 98.

In 2001, plaintiffs sought an agreement with the city that would allow them to develop the north parcel so as to accommodate their nursery business. After plaintiffs attempted to obtain a mutually agreeable consent judgment, the city council decided to pursue a court order enjoining the commercial use of the north parcel and thereby enforcing this Court's decision that had been issued four years before. On March 27, 2002, that order was entered. Plaintiffs were required to remove all commercial materials from the north parcel and were directed to use that parcel consistent with its R-1D residential zoning.

Subsequently, plaintiffs purchased additional property that, combined with the north and south parcels, gave them more than five acres of property, thereby meeting the requirements for agricultural use under the city's zoning ordinance. When the city pursued contempt charges against plaintiffs for failing to comply with the court's order of March 27, 2002, by continuing to conduct commercial activity on the north parcel, the trial court held that because of the new size of the property, plaintiffs could use the north parcel for agricultural use under the zoning ordinance. Plaintiffs then built two greenhouses on the north parcel. Eventually they built a pole barn and periodically, at least, used cold frames on the north parcel.

Defendants issued two citations related to the construction of the greenhouses. One citation was for constructing a greenhouse without approval from the city's Board of Zoning Appeals. Defendants alleged that plaintiffs were not entitled to an agricultural exemption from building permits under the Construction Act because such exemption did not apply when a building is used for retail trade. The second citation was for constructing an "accessory supplemental building" over 600 square feet, or more than one-half of the ground floor area of the main building on the premises, contrary to § 40.57.04 of the city's zoning ordinance.

After unsuccessfully seeking dismissal of the citations through the City of Troy, plaintiffs sued on June 13, 2005. Their three count complaint included (1) a claim that defendants repeatedly harassed plaintiffs by failing to follow prior court rulings, the Right to Farm Act (RTFA), MCL 286.471 *et seq*., the Construction Act, and the city's zoning ordinance in violation of 42 USC 1983, (2) a request for declaratory judgment on the ground that their use was protected under the RTFA and exempt from the zoning ordinance and the Construction Act, and (3) a request for a permanent injunction, enjoining defendants from interfering with their agricultural use of their property. Defendants filed a counterclaim seeking (1) abatement of a nuisance, i.e., the removal of the two greenhouses and any other structures found to be an unlawful expansion of plaintiffs' nonconforming use, and (2) injunctive relief.

The parties filed cross-motions for summary disposition. On February 17, 2006, the court granted defendants' motion as to plaintiffs' § 1983 claim (Count I) and denied plaintiffs' request for injunctive relief (Count III). It granted summary disposition for plaintiffs on

[1] It appears that plaintiffs used the parcel in part for storage and display of farm products, and the parking of customer and employee automobiles. *Papadelis II*, *supra* at 96.

defendants' counterclaim. The court also granted summary disposition in plaintiffs' favor with regard to their request for a declaratory judgment (Count II), holding that plaintiffs' use of their property was agricultural use that was protected under the RTFA, and was exempt from the pertinent section of the zoning ordinance and exempt from the Construction Act, MCL 125.1501 *et seq*. Defendants appealed and plaintiffs cross appealed.

This Court affirmed the trial court's decision to grant summary disposition in plaintiffs' favor with regard to Count II of their complaint seeking declaratory relief. *Papadelis v City of Troy*, unpublished opinion per curiam of the Court of Appeals, issued September 19, 2006 (Docket No. 268920) (*Papadelis III*). This Court held that (1) plaintiffs' use of the north parcel was protected under the RTFA and could not be found to be a nuisance, (2) the greenhouses on the north parcel were exempt from building permit requirements under the Construction Act, MCL 125.1510(8), and (3) the city's zoning ordinances regarding building size and permit requirements conflict with the RTFA and thus could not be enforced against plaintiffs with regard to the north parcel. *Papadelis III*, slip op at 6-8. This Court also affirmed the trial court's dismissal of plaintiffs' claim under 42 USC 1983. *Id*., slip op at 8.

Leave to appeal to our Supreme Court was sought by both parties and, in lieu of granting leave, the Supreme Court reversed in part the judgments of the trial court and this Court "to the extent that they hold that the Right to Farm Act, MCL 286.471 *et seq*. (RTFA), and the State Construction Code, MCL 125.1502a(f), exempt the plaintiffs from the defendant city's ordinances governing the permitting, size, height, bulk, floor area, construction, and location of structures used in the plaintiffs' greenhouse operations." The June 29, 2007, order continued:

> Assuming that the plaintiffs' acquisition of additional land entitled them under the city's zoning ordinances to make agricultural use of the north parcel (a point on which we express no opinion, in light of the defendant city's failure to exhaust all available avenues of appeal from that ruling after the remand to the Oakland Circuit Court in the prior action, see *City of Troy v Papadelis (On Remand)*, 226 Mich App 90; 572 NW2d 246 (1997)), the plaintiffs' structures remain subject to applicable building permit, size, height, bulk, floor area, construction, and location requirements, under the defendant city's ordinances. The plaintiffs' greenhouses and pole barn are not "incidental to the use for agricultural purposes of the land" on which they are located within the meaning of MCL 125.1502a(f). As no provisions of the RTFA or any published generally accepted agricultural and management practice address the permitting, size, height, bulk, floor area, construction, and location of buildings used for greenhouse or related agricultural purposes, no conflict exists between the RTFA and the defendant city's ordinances regulating such matters that would preclude their enforcement under the facts of this case. We REMAND this case to the Oakland Circuit Court for further proceedings not inconsistent with this order. In all other respects, the applications are DENIED, because we are not persuaded that the remaining questions presented should be reviewed by this Court. [*Papadelis v City of Troy*, 478 Mich 934; 733 NW2d 397 (2007) (*Papadelis IV*).]

On July 11, 2007, defendants filed in the trial court their "motion for order directing plaintiffs to remove buildings and structures constructed without permits or other approvals as required by ordinance." Defendants sought the removal of "two large greenhouses, the pole

barn, the several cold frame structures, and every other structure constructed on said property without permit and/or in violation of Troy ordinances." Defendants first argued that all of the structures were built without permits or other approvals required under § 40.55.00(C) of the zoning ordinance. Second, the two greenhouses—sized at 2,250 and 1,800 square feet—and cold frames violated former § 40.57.04 that limited the size of accessory buildings on one residentially zoned parcel to 600 square feet, or one half the ground floor area of the main building on the property. Third, under § 04.20.03(D), a greenhouse falls within the definition of a supplemental accessory building and, under § 40.56.03, the total area of a residential parcel that may be occupied by supplemental accessory buildings is only 200 square feet—another violation. Fourth, the pole barn violated several sections, including §§ 40.56.02(E) [height], 40.56.00(B) [occupies more than 25 percent of yard], 40.56.02(C) [excess ground floor area], 40.56.02(D) [too close to main building], and 30.10.05 [covers more than 30 percent of lot]. And fifth, at the time plaintiffs constructed their greenhouses and cold frames, § 40.57.10 required approval from the Board of Zoning Appeals to construct accessory buildings and no approval was sought or received. Pursuant to the former City and Village Zoning Act in effect at the time this lawsuit was filed (MCL 125.587) and the current provisions of the Michigan Zoning Enabling Act (MCL 125.3407), the use of any structure or building erected in violation of a zoning ordinance was a nuisance per se. Thus, defendants argued, abatement by the court was required and they were entitled to such an order.

On July 24, 2007, plaintiffs filed their response in opposition to defendants' motion for an order to compel removal of structures. Plaintiffs argued that the ordinances defendants cited were not applicable to their greenhouses or agricultural structures. Their structures were for commercial agricultural uses and were necessary to the greenhouse/floricultural industry. Plaintiffs' uses of their property were both residential and commercial and neither use was subordinate to the other—they were complementary. Therefore, the greenhouses and other agricultural structures were not "accessory" because they were not "supplemental and subordinate to the main use and used for purposes clearly incidental to those of the main use." Further, under § 04.20.03(D), a "greenhouse" is one of a group of accessory supplemental buildings "for recreation or pleasure," which was not applicable to plaintiffs' commercial agricultural use. Therefore, plaintiffs argued, they were not subject to the height, bulk, and size requirements of "greenhouses" or "accessory buildings" as those structures were defined by defendants. Plaintiffs requested an evidentiary hearing to develop the record in this matter.

After a four-day evidentiary hearing, the trial court (1) denied defendants' motion, holding that plaintiffs' greenhouses, cold frames, and pole barn do not violate any applicable ordinance, (2) dismissed defendants' counterclaim, and (3) granted judgment in plaintiffs' favor. Defendants' motion for reconsideration was denied and this appeal followed. Subsequently, this Court entered an order granting a motion to file an amicus curiae brief on behalf of Michigan Farm Bureau. *Papadelis v City of Troy*, unpublished order of the Court of Appeals, entered March 4, 2009 (Docket No. 286136).

On appeal, defendants first argue that the trial court failed to properly construe the provisions of the zoning ordinance which led to the erroneous conclusion that they were not applicable to plaintiffs' greenhouses, cold frames, and pole barn. We disagree.

A lower court's interpretation of the meaning of an ordinance is reviewed de novo. *Ballman v Borges*, 226 Mich App 166, 167; 572 NW2d 47 (1997). The rules of statutory

construction apply to the interpretation of an ordinance. *Goldstone v Bloomfield Twp Pub Library*, 479 Mich 554, 568 n 15; 737 NW2d 476 (2007). The primary goal of such interpretation is to give effect to the intent of the legislative body. *Ballman*, *supra*. The specific language used in the ordinance is the first criterion in determining intent. *Id*. at 168. If the plain and ordinary language is clear, judicial construction is normally neither necessary nor permitted. *Id*.

It is undisputed that plaintiffs' north parcel is zoned R-1D, which is single-family residential. It may, therefore, be used for the purposes described in §§ 10.00.00 through 10.20.08 of Troy's zoning ordinance. Section 10.20.00 describes the "principal uses permitted" and provides that "no building or land shall be used and no building shall be erected except for one or more of the following specified uses, unless otherwise provided in this Chapter." Those specified uses are set forth in sections. Section 10.20.01 provides for one-family dwellings, § 10.20.02 provides for "agriculture," § 10.20.03 provides for publicly owned and operated libraries, parks, parkways, and recreational facilities, § 10.20.04 provides for cemeteries, § 10.20.06 provides for "accessory buildings," and so forth. Thus, "agriculture" is specified as a permitted principal use of property zoned R-1D.

Next we turn to the definition of "agriculture." Article IV sets forth the definition of "agriculture" as "[f]arms and general farming, including horticulture, floriculture, dairying, livestock, and poultry raising, farm forestry, and other similar enterprises, or uses . . . ." See § 04.20.05. In this case, defendants do not contest that the floriculture and horticulture that are occurring on plaintiffs' property are "agriculture" and thus constitute a permitted principal use of plaintiffs' property. Rather, defendants seem to claim that, although the use is permitted, the two greenhouses, pole barn, and cold frames are not permitted because they are in violation of other provisions of the zoning ordinance. In particular, defendants claim that they are all "accessory buildings" or "accessory supplemental buildings" under the ordinance and thus subject to certain regulations.

Turning back to Article IV, an "accessory building" is defined at § 04.20.01 as follows:

> A building, or portion thereof, which is supplemental or subordinate to the main building or to the use of the land and is devoted exclusively to an accessory use. The various types of accessory buildings shall be further defined as follows:
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> A. Barn: A building specifically or partially used for the storage of farm animals such as, but not limited to: horses, cattle, sheep, goats, and fowl, other than a dog house.
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> B. Garage: A building, or portion of the main building, of not less than one hundred eight [sic] (180) square feet designed and intended to be used for the periodic parking or storage of one or more private motor vehicles, yard maintenance equipment or recreational vehicles such as, but not limited to boats, trailers, all terrain vehicles and snowmobiles.
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> C. Storage Building/Shed: A building designed and intended to be used for the storage of tools, garden tractors, lawn mowers, motorcycles, small recreation vehicles such as, but not limited to, snowmobiles, ATV's, and motor scooters.

Defendants argue that the two greenhouses, pole barn, and cold frames meet this definition because the main use of the property is residential so the buildings are subordinate to that use. In the alternative, defendants argue, if the main use is agriculture, these structures support the agricultural use and are subordinate to that use. We disagree with both claims.

First, at the evidentiary hearing, defendants' only witness, Mark Stimac, the Director of Building and Zoning, testified that he, in fact, did not know what the principal use of the north parcel of plaintiffs' property was, but the principal uses could be both agriculture and residential without either being subordinate to the other use. Stimac did not know if the residence on the north parcel was the main use of the property. Further, Stimac testified that "[t]he greenhouses in building area certainly exceed by almost ten-fold the size of the residential single family house that's on the property." Plaintiffs' witness, Leslie Meyers, testified that over 75 percent of the north parcel was used for floriculture and agricultural activities and were not accessory to residential use. Thus we reject defendants' unsubstantiated claim that the main use of the property is residential and that "the buildings are subordinate to the main residential building."

We also reject defendants' alternative argument that, even if the main use is agriculture, the two greenhouses, pole barn, and cold frames meet the definition of "accessory building" as defined in § 04.20.01. The second sentence of the definition, set forth above, provides: "The various types of accessory buildings shall be further defined as follows" and then specifically lists barns, garages, and storage buildings/sheds, with definitions for each. We note that under § 04.10.01, "the word 'shall' is mandatory and not directory." Further, it is well established that, like statutes, if the ordinance defines a term, that definition controls. See *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). Thus, if the greenhouses, pole barn, and cold frames are not a barn, a garage, or a storage building/shed as defined by the ordinance, they are not "accessory buildings" under the ordinance.

Section 04.20.01(A) defines a "barn" for purposes of the ordinance as a building for the storage of farm animals. Plaintiffs did not store farm animals in any of the contested structures; therefore, none of their buildings could be considered a "barn." Section 04.20.01(B) defines a "garage" for purposes of the ordinance as a building "designed and intended to be used for the periodic parking or storage of one or more private motor vehicles, yard maintenance equipment or recreational vehicles such as, but not limited to boats, trailers, all terrain vehicles and snowmobiles." Plaintiffs did not store private vehicles, yard maintenance equipment or recreational vehicles in any of the contested structures; therefore, none of their buildings could be considered a "garage." Section 04.20.01(C) defines a "storage building/shed" for purposes of the ordinance as a building "designed and intended to be used for the storage of tools, garden tractors, lawn mowers, motorcycles, small recreation vehicles such as, but not limited to, snowmobiles, ATV's, and motor scooters." There is no record evidence that plaintiffs used any of the contested buildings as a "storage building/shed," i.e., to store tools, garden tractors, lawn mowers, motorcycles, or small recreation vehicles. Accordingly, contrary to defendants' claims, the two greenhouses, pole barn, and cold frames do not meet the definition of "accessory building" as set forth in § 04.20.01. Therefore, they are not accessory buildings within the plain meaning and defined terms of the ordinance.

Next we consider whether the greenhouses and cold frames are accessory supplemental buildings as defendants claim. We again turn to Article IV, and find that an "accessory supplemental building" is defined at § 04.20.03 as follows:

> An accessory building used by the occupants of the principal building for recreation or pleasure, such as a gazebo, a swimming pool cabana, a building housing a spa or greenhouse. The various types of accessory supplemental buildings shall be further defined as follows:
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> * * *
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> D. Greenhouse: A detached building that is used for non-commercial purposes, constructed of permanent or temporary framing that is set directly on the ground and is covered with glass panels or plastic or other transparent material, and is used to grow plants.

Clearly, this definition contemplates a residential use as the main use of the property by its reference to a "building used by the occupants of the principal building for recreation or pleasure . . . ." And there is no evidence that plaintiffs' greenhouses and cold frames were used "for recreation or pleasure."

In fact, the evidence of record indicates that the greenhouses and cold frames were used in conjunction with plaintiffs' horticulture and floriculture commercial business that is located on the south parcel. Again, the ordinance sets forth a mandatory and limited definition of the various types of accessory supplemental buildings and it includes the definition of a "greenhouse" as a detached building that "is used for non-commercial purposes." Defendant Stimac testified at the evidentiary hearing that agricultural operations in residentially zoned districts can sell their products, but not by retail sale operations occurring on the property. That is, commercial operations can occur on the property without violating an ordinance. Accordingly, plaintiffs' greenhouses and cold frames do not meet the definition of "accessory supplemental building" as defined in § 04.20.03 and, thus, are not accessory supplemental buildings within the plain meaning and defined terms of the ordinance.

Nevertheless, defendants argue that the trial court's conclusion that the greenhouses, cold frames, and pole barn are neither "accessory buildings" nor "accessory supplemental buildings," was erroneous. Defendants contend that even if these are "agricultural buildings," as the trial court held, they still must comply with the regulations for structures on residentially zoned properties. In other words, plaintiffs were allowed to either build a "one-family dwelling," pursuant to §10.20.01 or an "accessory building" pursuant to § 10.20.06. We disagree.

Sections 10.20.00 through 10.20.08 list the principal uses permitted and, although one-family dwellings and accessory buildings are included in that list, so is "agriculture" under § 10.20.02. In other words, § 10.20.00 describes the "principal uses permitted" and provides that "no building or land shall be used and no building shall be erected except for one or more of the following specified uses . . . agriculture." As discussed above, plaintiffs' buildings were not "accessory buildings." For clarity purposes, the trial court appears to have termed plaintiffs' buildings "agricultural buildings." We will do the same.

Defendants argue that these agricultural buildings had to comply with the same regulations that would apply if the principal use of this property had been a one-family dwelling. But there is no indication in the ordinance of such requirement. An ordinance must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or required. See

*English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 469; 688 NW2d 523 (2004). In fact, as the trial court noted, there are significant indications to the contrary. The definition of "agriculture" is "general farming, including horticulture, floriculture, dairying, livestock, and poultry raising, farm forestry, and other similar enterprises, or uses . . . ." § 04.20.05. This definition implies that such agricultural use would occur in buildings. Stimac testified that, according to his interpretation of the ordinance, a 100 acre farm, being used for agricultural purposes, that also has a 1,000 square foot home could only have 600 square feet of barns, silos, and other agricultural buildings. But, again, the ordinance does not set forth such a requirement with regard to agricultural buildings.

Next, defendants argue that allowing plaintiffs to maintain the contested agricultural buildings violates the intent of the ordinance which is to "provide for environmentally sound areas of predominantly low density single family detached dwellings." We disagree. The intention of providing low-density, single-family dwellings actually appears to be furthered by plaintiffs' agricultural use of their property. Preserving agricultural uses compatible with limited residential development, protecting the decreasing supply of agricultural land by allowing only limited residential development and/or maintaining some rural character to the community arguably provides "for environmentally sound areas of predominately low density single family detached dwellings." In any case, this argument is without merit.

Defendants also argue that the trial court's interpretation and conclusion that defendants' ordinance contains no provisions that relate to agricultural buildings "defies common sense" and leads to an absurdity. We disagree. The wisdom of an ordinance, like a statute, is for the determination of the legislative body and must be enforced as written. See *City of Lansing v Lansing Twp*, 356 Mich 641, 648; 97 NW2d 804 (1959). Agriculture is a principal use permitted, as are one-family dwellings, accessory buildings, and others. That defendants' ordinance provides detailed and specific regulations with respect to some principal uses and does not include agriculture within the ambit of those regulations is the prerogative of the legislative body and we may not second-guess such wisdom. Further, plaintiffs' expert witness, Leslie Meyers, testified that as a zoning administrator in every municipality she has worked where there has been farming, agricultural buildings have been exempt from such regulation.

Defendants also claim that the trial court's decision must be reversed because it "failed to accord great weight to how the ordinance has been applied by the officer or agency charged with its administration." We disagree. Stimac testified that plaintiffs' two greenhouses, pole barn, and cold frames were "accessory structures" but, clearly, they did not meet the definition provided by defendants' own ordinance. Stimac testified that the greenhouses and cold frames were "accessory supplemental buildings" but they clearly did not meet the definitional requirements of a "greenhouse." Stimac also testified that he did not know what the principal use of the north parcel was but that such a determination would be necessary in deciding whether a use complied with the zoning ordinance provisions. Stimac did not know the difference between a "hobby greenhouse" and a "commercial greenhouse." Stimac did not know that to operate a floriculture or horticulture operation in Michigan, flowers would have to be grown in greenhouses and cold frames. Stimac did not take into consideration what might be normal for an agricultural operation that is a permitted use when he is determining whether a building is in compliance with a zoning ordinance. Although the trial court made findings that were contrary to or inconsistent with Stimac's testimony, defendants have failed to show that such findings

were erroneous. The trial court was permitted to draw its own conclusions from all of the available evidence and to make credibility determinations.

In summary, defendants' arguments in support of their claim that the trial court failed to properly construe certain provisions of the zoning ordinance leading to an erroneous conclusion that they were not applicable to plaintiffs' greenhouses, cold frames, and pole barn are all without merit. The trial court's decision on the matter is affirmed.

Next, defendants argue that the trial court abused its discretion and violated the constitutionally mandated separation of powers in determining that Troy's zoning ordinance requiring site plan approval was not applicable to the buildings constructed by plaintiffs. However, that was not entirely the trial court's ruling. Rather, the trial court held that, plaintiffs did attempt to comply with the ordinance by seeking permits and site plan approvals, but Stimac refused to review those requests on the ground that the proposed buildings violated the zoning ordinance. Stimac testified that plaintiffs' site plans were not reviewed because the structures violated the ordinance with regards to the allowable size of accessory buildings. Stimac also testified that if plaintiffs had requested permits for the structures on the north parcel, they all would have been denied, presumably also on the grounds that they were "accessory buildings" or "accessory supplemental buildings." Accordingly, the trial court's conclusion that, "[p]laintiffs' attempts to obtain a building permit or site plan approval were futile," was supported by the record evidence. Thus, this issue is without merit.

Next, defendants argue that the trial court abused its discretion in allowing the testimony of plaintiffs' expert witnesses. We disagree. The admissibility of expert testimony is reviewed for an abuse of discretion. *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). An abuse of discretion occurs when the trial court's decision is outside the principled range of outcomes. *Id*.

First, as they did in the trial court, defendants argue that Donald Juchartz should not have been allowed to testify as an expert witness because his expertise in horticulture would not assist the trial court to determine a fact in issue, i.e., whether plaintiffs' buildings violated ordinance provisions, as required under MRE 702. Plaintiffs responded, as they do here, that the testimony was relevant to the issue of what is involved with an agricultural use, which was a principal use permitted by defendants' ordinance. We agree.

"Agriculture" is specified in defendants' ordinance as a permitted principal use of property zoned R-1D. Horticulture and floriculture are included within the definition of "agriculture" provided in § 04.20.05 and plaintiffs were engaged in these activities on the north parcel. MRE 702 provides for the admission of specialized knowledge if the court determines that it would be of assistance "to understand the evidence or to determine a fact in issue . . . ." That the trial court found this standard was met with respect to the admission of Juchartz's testimony does not constitute an abuse of discretion. Testimony relating to the normal incidents and practicalities of an agricultural use clearly could be helpful to the trial court in this case.

Second, defendants argue that the trial court abused its discretion in allowing the testimony of Leslie Meyers because she was not on plaintiffs' witness list and her testimony did not meet the requirements of MRE 702. We disagree. Although Leslie Meyers was not specifically listed on plaintiffs' witness list that was tendered about two years before this

hearing, the witness list did include "all necessary rebuttal expert witnesses" and Meyers was offered as a rebuttal witness to Stimac's testimony. Apparently, before this hearing on defendants' motion for an order directing plaintiffs to remove the contested structures was conducted, plaintiffs requested that additional discovery occur and defendants objected. Under MCR 2.401(I)(2), the trial court likely could have prohibited the testimony, but in light of the circumstances apparently declined to do so. This decision does not constitute an abuse of discretion.

Further, the trial court did not abuse its discretion when it admitted Meyers' testimony. She was offered as an expert in planning and zoning matters. Defendants objected to her testimony on the grounds that she was not an expert in Troy's zoning ordinance, particularly since she had just recently reviewed the ordinance online; therefore, Meyers could not be a benefit in assisting the court on the issue whether the buildings in question comply with the ordinance. Plaintiffs responded that Meyers had a long history and expertise in zoning matters and planning. Stimac testified as to his understanding of the ordinance provisions and Meyers was offered to give the court another perspective as to the interpretation and applicability of those provisions. The court permitted the testimony.

Again, MRE 702 provides for the admission of specialized knowledge if the court determines that it would be of assistance "to understand the evidence or to determine a fact in issue . . . ." In light of Stimac's testimony, it appears that the testimony of Meyers would be of significant assistance to the court. For example, Stimac testified that he did not know the primary or principal use of the north parcel, although that information would be required to determine whether the use complied with ordinance provisions. Stimac also testified that all agricultural structures, on an area not less than five acres in size, had to meet the same requirements applicable to single-family residences that were on 8,500 square foot lots. Testimony that might provide additional details with regard to plaintiffs' specific use of the property, including their agricultural use, how that lawful use is impacted by the application of various ordinance provisions, as well as her interpretation of the provisions clearly could be helpful to the court in this case. Thus, the trial court did not abuse its discretion in admitting the testimony.

Finally, defendants argue that the trial court's ruling conflicts with our Supreme Court's order that held that plaintiffs' structures remained subject to the applicable building permit, size, height, bulk, floor area, construction, and location standards under defendants' ordinances. We disagree.

The Supreme Court's order, as quoted above, indicates that "the plaintiffs' structures remain subject to applicable building permit, size, height, bulk, floor area, construction, and location requirements, under the defendant city's ordinances." *Papadelis IV*, *supra*. We disagree with defendants' claim that the Supreme Court directed the trial court to apply the zoning ordinance provisions discussed above, including those applicable to "accessory buildings" and "accessory supplemental buildings." The issue whether these or any of defendants' ordinances apply to plaintiffs' greenhouses, pole barn, and cold frames was never reached or decided. While a lower court, on remand, has a duty to comply strictly with the mandate of an appellate court, we discern no such mandate in the order. See *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 128; 737 NW2d 782 (2007). Accordingly, the

trial court's decision, that the particular structures do not violate any applicable zoning ordinance, does not conflict with our Supreme Court's order.

Affirmed. Plaintiffs are entitled to tax costs under MCR 7.219(A).

/s/ Jane M. Beckering
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly